IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 21822 of 2007(W)

OS.1040/2005 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:

C.U.RAJAN, AGED 33 YEARS, CHEERAN HOUSE,
AYYAPANKAVU WEST ROAD, KOCHI-682 018.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT:

BINIL.C.THAMPY, S/O.C.C.THAMPY,
CHERUVATHOOR HOUSE, MELE CHERLAYAM,
KUNNAMKULAM, THRISSUR DISTRICT.

BY ADV. SRI.S.SAJU
SRI.BOBBY LAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.21822/2007 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PROMISSORY NOTE DTD. 7/06/2004.**

EXT.P2: **COPY OF THE AGREEMENT DTD. 7/06/2004.**

EXT.P3: **COPY OF THE PLAINT IN O.S.NO.1040/2005.**

EXT.P4: **TYPED COPY OF THE ORDER DTD. 20/06/07 PASSED BY THE FIRST ADDITIONAL MUNSIFF COURT, ERNAKULAM.**

EXT.P5: **TYPED COPY OF THE ORDER DTD. 4/07/07 PASSED BY THE FIRST ADDITIONAL MUNSIFF COURT, ERNAKULAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.21822 OF 2007

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Dated this the 4th day of September 2007

JUDGMENT

This writ petition is preferred against the order of the I Addl.Munsiff's Court, Ernakulam in O.S.No.1040 of 2005. The court below interpreted Ext.P2 document as a bond and directed the party to pay 10 times stamp duty and penalty and as the amount could not be paid had impounded the document to the District Collector for levying stamp duty and penalty. Learned counsel for the petitioner strongly contends before me that Ext.P2 at the most can be read only as an agreement and it does not satisfy the characteristic of a bond at all and therefore the order requires interference. It is true that the nomenclature of the document cannot be having the binding effect on interpretation of a document, but what is to be read is the intention of the parties revealed from the terms of the document. It is seen from Ext.P1 that an amount of Rs.50,000/- has been borrowed. In Ext.P2 it is stated that as per the promissory note, an amount of Rs.50,000/- had been borrowed and it is agreed that the amount will be paid as stated therein. So, Ext.P2 only can be read as a document whereby the amount borrowed is

undertaken to be discharged within the stipulated time as stated in Ext.P1 document. A definition of bond means an instrument whereby a person obliges himself to pay money to another, etc.

2. Learned counsel for the petitioner had cited before me the decision of this court reported in **Krishnankutty v. Jayakrishnan(2005(2)KLT SN Case No.32)**. It is stated therein that where the obligation is a pre-existing one, the subsequent document giving the nature of the obligation or the terms and conditions of the contract shall be a mere agreement. I have absolutely no quarrel with the said proposition. But, in the case on hand, what is done is an undertaking to repay the amount due under the transaction by executing Ext.P2. So, it gets the characteristic of a bond and therefore the decision cited by the learned counsel for the petitioner will not come to his rescue. I am also equally aware of the fact that if two interpretations are possible, one which is beneficial to the person liable to pay stamp duty must be interpreted in his favour. According to me, in this case, a reading of Ext.P2 coupled with Ext.P1 only leads to one interpretation, i.e. an undertaking and therefore I hold that Ext.P2 document assumes the characteristic of a bond and stamp duty has to be paid.

3. The learned Munsiff has impounded the document and the matter is

pending consideration before the District Collector for levying stamp duty and penalty. I earnestly hope and feel that the District Collector, taking into consideration the peculiar facts and circumstances of this case will only impose the necessary stamp duty and a very small penalty so that undue hardship to the plaintiff can be averted in getting back the amount. The learned Munsiff is directed not to proceed with the case till the impounded document is received back. The District Collector may dispose of the matter, as expeditiously as possible, at any rate, within two months.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-